

Law Office of Jack Silver

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Santa Rosa, California 95402
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June 3, 2005

**CERTIFIED MAIL --
RETURN RECEIPT REQUESTED**

Michael Bracewell
Supervisor - Sewage Collection
Department of Public Works
City of Rohnert Park
600 Enterprise Drive
Rohnert Park, CA 94928

RE: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Bracewell:

Section 505(b) of the Federal Water Pollution Control Act ("Clean Water Act") requires that sixty (60) days prior to the initiation of a civil action under 33 U.S.C. §1365(a), §505(a) of the Clean Water Act, a citizen must give notice of his/her intent to sue to the alleged violator, the United States Environmental Protection Agency, the State in which the violations occurred and the registered agent of the alleged violator.

Northern California River Watch ("River Watch") hereby places the City of Rohnert Park (hereafter "the City") on notice that following the expiration of sixty (60) days from the date of this NOTICE River Watch intends to bring suit in Federal District Court against the City for its continuing violations of "an effluent standard or limitation", permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under §505(a)(1) of the Clean Water Act, 33 U.S.C. §1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by the incidents of non-compliance listed further in this NOTICE.

BACKGROUND

The Clean Water Act regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter which has been issued a permit pursuant to the National Pollution Discharge Elimination System ("NPDES") to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a). Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a), 33 U.S.C. § 1365(f)(1).

The Clean Water Act provides that, in any given state or region, authority to administer the NPDES permitting system can be delegated by the federal Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. 33 U.S.C. §1342(b). In California, the EPA has granted authorization to a state regulatory apparatus, comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this case is the Regional Water Quality Control Board, North Coast Region ("RWQCB").

The City owns and operates a large, satellite sewage collection system serving a population of approximately 45,000, which conveys untreated wastewater from residential and commercial sources within the community of Rohnert Park to the Santa Rosa Laguna Subregional Wastewater Treatment, Reuse, and Disposal Facilities ("Laguna Subregional Facilities"). The City's sewage collection system experiences significant levels of inflow and infiltration ("I&I") of groundwater and stormwater entering the system through broken pipelines and misaligned joints which, combined with the affects of blockages, result in surface overflows discharging raw sewage into surface waters which flow into gutters, canals and storm drains. Rohnert Park has low lying areas which become saturated during the wet season resulting in high levels of I&I leading to frequent, ongoing overflow events. Members of River Watch have visually observed sewage overflows within the city limits of Rohnert Park. It is estimated that the City experiences at least one overflow of raw, untreated sewage per week from its sewage collection system. Beneficial uses of creeks and streams in the area are affected in a prohibited manner. Surface waters become contaminated with fecal coliform, exposing animals including humans to pathogens.

The EPA has proposed regulations which would require all NPDES permits regulating regional wastewater treatment facilities, including all municipal satellite collection systems, to implement capacity, management, operation, and maintenance ("CMOM") programs. The general requirements of a CMOM are that the City, as the NPDES permit holder, prevent and mitigate sewer overflows by:

1. Operating and maintaining the sewer system to effectively provide adequate collection system capacity.
2. Responding promptly and effectively to stop or mitigate overflow events.
3. Notifying affected parties.
4. Making your CMOM plan and audit available to the general public.

The permittee responsible for CMOM program implementation in a municipal satellite collection system may be either the owner or operator of the municipal satellite collection system or the owner or operator of the regional collection system that accepts flows from the municipal satellite collection system. Specific responsibilities would be clarified on a case-by-case basis in the NPDES permit. The NPDES authority has discretion on whether NPDES permits are individual permits, co-permits, or general permits. Permits for municipal satellite collection systems would contain the standard permit conditions for reporting, record keeping, public notification, CMOM programs and the prohibition on sanitary sewage overflow discharges.

The present federal administration has placed the EPA's proposed regulations on hold, delaying formal implementation of those regulations for an indefinite period. However, the EPA and regional permitting authorities have incorporated CMOM provisions into new permits. The RWQCB has expressed an interest in bringing the City under its regulatory authority by making the City subject to the Laguna Subregional Facilities' anticipated new NPDES permit, as a satellite collection system, in accordance with the proposed EPA regulations. The City would thereby be required to implement a CMOM program.

River Watch regards this as the preferred remedy for addressing the City's ongoing collection system failures. However, the RWQCB has set no clear timetable nor made any definite statement that it will in fact bring the City under the Laguna Subregional Facilities' new permit. Therefore, River Watch seeks injunctive relief, either by negotiated settlement or court order, directing the City to develop a CMOM program, consistent with the proposed EPA regulations, including but not limited to a spill response plan, timetable for video inspection of the entire system, and prioritized Capital Improvement Program based on the results of the video inspection.

VIOLATIONS

From June 3, 2000 through June 3, 2005, the City has violated the Clean Water Act, the Basin Plan and the Code of Federal Regulations by discharging pollutants to waters of the United States from its sewage collection system without a NPDES permit, in violation of the prohibition of the Clean Water Act with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, Clean Water Act § 301(a), 33 U.S.C. § 1311(a).

Some of the violations are reported to the City's Department of Public Safety. By law, all violations should have been reported to the Sonoma County Department of Health Services. These violations are continuing. Based on observations by River Watch members, it is estimated that the City has committed 250 illegal discharges of untreated sewage to waters of the United States during the period from June 3, 2000 through June 3, 2005.

These enumerated violations are based upon investigations conducted by the RWQCB and by River Watch. In addition to all of the above violations, this NOTICE covers any and all violations evidenced by reports which the City has submitted to any agency during the period June 3, 2000 through June 3, 2005. This NOTICE also covers any and all violations which may have occurred but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by the City to any regulatory agency.

Pursuant to §309(d) of the Clean Water Act, 33 U.S.C. §1319(d), each of the above described violations of the Clean Water Act subjects the violator to a monetary penalty per violation, for violations occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition to civil penalties, River Watch will seek injunctive relief preventing further violations of the Clean Water Act pursuant to CWA § 505(a) & (d), 33 U.S.C. §1365(a) & (d), and such other relief as is permitted by law. Lastly, CWA §505(d), 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and fees.

The violations of the City as set forth in this NOTICE effect the health and enjoyment of members of River Watch who reside and recreate in the City and the surrounding area. The members of River Watch use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the City's violations of the Clean Water Act as described in this NOTICE.

CONTACT INFORMATION

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California. Its address is 6741 Sebastopol Avenue Ste. 140, Sebastopol, CA 95472 Telephone number is 707- 824-4372.

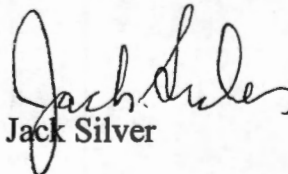
River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Jack Silver, Esquire
Law Offices of Jack Silver
Post Office Box 5469
Santa Rosa, CA 95402-5469
Telephone 707-527-8175

River Watch believes this NOTICE sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit against the City in United States District Court under CWA §505(a) for the violations identified in this NOTICE.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this NOTICE. However, if the City wishes to pursue such discussions in the absence of litigation, it is suggested that those discussions be initiated within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that notice period ends.

Sincerely,


Jack Silver

JS:lhbm

cc: Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, D.C. 20460

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne St.
San Francisco, CA 94105

Celeste Cantù, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Mark Leary, Executive Director
Calif. Integrated Waste Management Board
1001 "I" Street
Sacramento, CA 95814

Michelle Marchetta Kenyon
City Attorney
City of Rohnert Park
6750 Commerce Boulevard
Rohnert Park, CA 94928

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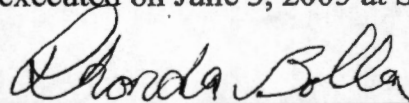
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1 [] (BY FACSIMILE) by transmitting via facsimile number (707) 542-7139 the documents(s)
2 listed above to the fax number(s) set forth in the addresses above, or as stated on the attached
3 service list, on this date before 5:00 p.m.

4 I declare under penalty of perjury, under the laws of the State of California, that the
5 foregoing is true and correct, and that this declaration was executed on June 3, 2005 at Santa
6 Rosa, California.

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